

**Consultation
outcomes**

**Office for
Students**



Reforms to OfS registration requirements

**Background and executive summary
of final decisions**

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Executive summary

The Office for Students (OfS) is the regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Providers must register with the OfS if they want to access specific benefits. This includes enabling eligible students to access student support funding – tuition fee and maintenance loans – from the Student Loans Company. To register with the OfS, providers must satisfy a set of entry tests or ‘initial conditions of registration’.

This document explains our decision to introduce both new entry tests for providers seeking to register with the OfS and new registration processes. This follows our February 2025 consultation, which set out proposed changes to our entry tests and processes in response to a number of changes in the context for higher education and the types of providers seeking registration.¹

As we noted in the consultation document, providers that are registering now are less likely to have a strong track record of providing higher education compared with those registered when our registration processes were first established. We want to make sure that new entrants can manage the increased risks that the sector is facing and that their students are treated fairly.

Providers are facing increasing financial challenges. They must have effective management and governance to navigate those challenges in a way that delivers good student outcomes. Where providers are making tough financial decisions, they must continue to meet the commitments they have made to students. Our engagement with students shows that being treated fairly is very important to them and suggests that too often this does not happen.

Increased risks to students and public funds can arise where the management and governance of a provider is weak. A report by the National Audit Office investigated concerns relating to subcontractual partnership arrangements where lead providers do not have sufficient oversight of their delivery partners and where delivery partners are not effective in managing these risks.²

In this context, we proposed changing our entry tests to ensure that providers can only register with the OfS, and access the benefits that registration confers, if they treat their students fairly, have effective management and governance arrangements in place and appropriately manage public funds and ensure value for money for taxpayers.

We received 55 responses from 28 respondents to our February consultation. We also held online engagement sessions with sector representative bodies, registered and unregistered providers and other stakeholders to support their understanding of the proposals and to seek their feedback on them. In coming to our decisions, we have considered the views shared during these sessions.

We would like to thank all those who took the time to consider and respond to the questions in the consultation or provided feedback at our engagement events. Overall, there was significant support for the proposals and the reasoning for them set out in the consultation document. Many

¹ OfS, [‘Proposals for reforms to OfS registration requirements’](#)

² National Audit Office, [‘Investigation into student finance for study at franchised higher education providers’](#).

respondents agreed with the aims of the proposals although some did not agree with specific aspects of the proposals.

We have analysed the consultation responses and stakeholder feedback received and after further policy thinking have decided to implement our proposals, broadly in the form on which we consulted. We have made some changes to our proposals as set out below.

We consider that our new requirements will give students, the public and the sector confidence that we are efficiently registering providers that can navigate the current challenges. They will also ensure students benefit from higher education and give taxpayers confidence that public funding is used appropriately. In developing our requirements, we have sought to reduce regulatory burden as far as possible whilst ensuring our entry tests provide appropriate scrutiny given the serious risks that can arise where providers are not appropriately managed and governed or are not treating their students fairly. A provider seeking registration that is well prepared and offers a high quality education provision will face less burden than those who are not.

The changes in entry requirements will, mostly, take effect on 28 August 2025, when we reopen for registration. Alongside this document, we have published a consultation outcomes and decision document for each of the three parts of the consultation. Each document summarises the responses that we received on our proposals and explains in more detail the decisions that we have made. We have also published the new initial conditions and accompanying guidance, and in the versions attached to the consultation outcomes and decision documents, we have highlighted the changes that we have made from the versions on which we consulted.

We have also published:

- a Notice of Determination issued under sections 5 and 75 of the Higher Education and Research Act 2017 ('HERA') setting out the changes to initial and ongoing conditions set out in the consultation outcomes and decision documents
- an updated version of our guidance on how to register with the OfS³
- additional annexes to the registration guidance, containing more detailed information about the interviews with key individuals and guidance for providers on fit and proper checks which underpin new initial condition E9
- a notice under section 3(5) of HERA to establish certain requirements, and templates, for an application for OfS registration.

³ OfS, 'Regulatory advice 3: How to register with the Office for Students'.

Summary of decisions on treating students fairly

1. We are implementing a new initial condition C5 in broadly the form on which we consulted. Initial condition C5 will replace existing initial condition C1 (Guidance on consumer protection law) and initial condition C3 (Student protection plan) for any new applications for registration, including any application from a registered university or college for registration in a different category of the OfS Register, received by the OfS on or after **28 August 2025**.
2. As we proposed, the new initial condition C5 will require a provider to treat students fairly in relation to its higher education provision and ancillary services. This will replace the previous requirement set out in initial condition C1 which required a provider to demonstrate ‘due regard’ to relevant guidance about consumer protection law. Ongoing condition C1 will continue to apply to all registered providers, including those registered on the basis of initial condition C5.
3. A provider will satisfy the requirements of initial condition C5 where at the point of registration, there is no evidence that it treats students unfairly. We have framed the condition in this way to specifically prevent behaviours that are unfair to students. For example, behaviours that would be considered unfair under the condition include: the publication of information which is unclear or misleading, contract terms that unfairly favour the rights of the provider over the rights and interests of students and policies and processes that limit students’ abilities to seek redress when things go wrong.
4. This new approach will enable a more streamlined assessment of a provider’s practices enabling refusal of registration where a provider exhibits negative behaviours and efficient processing of applications for providers that do not.
5. As proposed, we have also changed the application of **ongoing** condition C3 (Student protection plan), so it does not apply to a provider registered after being assessed against initial condition C5. This is because, under initial condition C5, we will assess a provider’s terms and conditions and other relevant student-facing policy and process documents. Providers registered under initial condition C5 will be required to publish those documents once registered. Taken together, those documents will constitute the provider’s student protection plan.
6. We have analysed the feedback that we received and after further policy thinking, we have made some changes to initial condition C5 and supporting guidance from the version that we proposed, including as follows:
 - We have clarified our definition of ancillary services in the condition and associated guidance.
 - We have clarified our definition of ‘information for students’ in the condition and associated guidance (including a change from ‘information for students’ to ‘information about the provider’ to better reflect the information that is in scope).
 - We have added further detail on some of the behaviours in the OfS prohibited behaviours list. We have provided further guidance to help providers understand the requirements and scope of the condition, and how we will assess compliance.

- We have provided further information about our approach to providers delivering higher education through subcontractual partnerships.
- We have clarified the submission requirements for initial condition C5 in the notice under section 3(5) of HERA to make clear that the requirement to submit relevant extracts of template contracts between apprentices and their employer also applies to other employer-sponsored students.
- We have made two changes to the C5 declaration form appended to the notice under section 3(5) of HERA as follows:
 - inclusion of further descriptions of the offences to be reported
 - Inclusion of declarations related to undertakings accepted by enforcement bodies and outstanding applications for enforcement orders made by enforcement bodies (proposed as a requirement in the consultation but not reflected in the declaration form in the consultation materials).

Summary of decisions on effective governance

7. We consulted on a proposal to introduce a new initial condition E7 (effective governance) to replace existing conditions E1 (public interest governance) and E2 (management and governance).
8. We have decided to implement our proposals in broadly the form on which we consulted. However, to improve clarity, we have decided to split the proposed initial condition E7 into three new initial conditions – E7, E8 and E9. Together, new initial conditions E7, E8 and E9 will test the effectiveness of a provider's governance arrangements for the purpose of being a registered higher education provider. These new initial conditions will replace initial conditions E1 and E2, for any new applications for registration, including any application from registered providers for registration in a different category of the OfS Register, received by the OfS on or after **28 August 2025**.
9. Initial condition E7 requires a provider to submit:
 - a defined set of governing documents at registration that would enable effective governance of the provider in practice
 - a clear and comprehensive five-year business plan, to demonstrate the provider's understanding of the higher education sector, its strategic objectives, associated risks, and how it intended to comply with ongoing conditions of registration.
10. Initial condition E8 requires a provider to have in place, at the point of registration, comprehensive arrangements for detecting, preventing and stopping fraud and the inappropriate use of public funds. If a provider has received or accessed public funds in the last 60 months, it must also have a satisfactory track record to meet our requirements, unless exceptional circumstances apply.
11. We have analysed the feedback that we received and after further policy thinking, we have made some changes to the requirements of what is now initial condition E8 to clarify its scope

(as relating to arrangements for delivering higher education only) and to include a definition of 'arrangements' in the condition itself (this was previously in the proposed guidance).

12. Initial condition E9 requires:

- a. A provider to have key individuals who have sufficient knowledge and expertise to enable it to comply with the OfS' ongoing conditions of registration and deliver in practice its business plan and its fraud and public money arrangements. The condition also sets out the knowledge and expertise we would expect key individuals at the provider to have. In response to the feedback that we received, we have clarified in the condition and guidance the scope of knowledge required for the Chair of the Governing Body and Independent Member of the Governing body in relation to the provider's student cohort.
- b. That relevant individuals must be fit and proper persons for the purposes of ensuring the provider is suitable to access and receive public funds; public trust and confidence in the higher education sector is maintained; and the provider is suitable to protect the interests of students.

13. In response to the feedback that we received and after further policy thinking, we have also made some amendments to the guidance that underpins initial conditions E7, E8 and E9, to ensure that it is as useful as possible to providers seeking registration.

Summary of decisions on registration application requirements

14. We consulted on introducing new requirements for registration applications to make the registration application process more efficient, protect public funds, and ensure that only credible and sustainable providers join the OfS Register.

15. We have decided to implement those new requirements in broadly the form on which we consulted. As we proposed, we are doing so through a notice under section 3(5) of HERA to formalise the information that providers need to submit at registration. We have also published the section 3(5) notice. Our new requirements will apply to new applications for registration but will not automatically apply to any application by a registered provider for registration in a different category of the OfS Register (when we may instead issue a bespoke section 3(5) notice to the provider). We have explained this in more detail in the 'Next steps for providers' section below.

16. We will also increase the support we offer providers to help ensure they have understood the OfS's requirements before submitting an application.

17. Our new registration requirements include:

- enhanced submission requirements relating to financial information, such as detailed financial scenario planning, commentary and mitigation plans to enhance our understanding of how a provider would remain financially viable and sustainable, and audited statements and corporate structure diagrams to enhance our understanding of the provider's governance and operational context.
- submission of information about investigations to which a provider has been subject in the preceding 60 months

- requirements to report specified matters that affect an application to register, during the application process
- a resubmission restriction period following refusal of a registration application which will come into force for applications made on or after 1 January 2026.

18. We have analysed the feedback that we received and after further policy thinking, we have made some changes to our proposed requirements, including as follows:

- After a refusal of a registration application, the resubmission restriction period will be 12 months, rather than the proposed 18 months. In reducing this period, we recognised the impact an 18-month restriction could have across multiple cohorts of students and the consequential impact that may then have on a provider's financial viability and sustainability. This revised period allows us to maintain a suitable restriction to encourage providers to submit complete applications which meet our regulatory requirements first time, while also providing applicants time to resolve meaningfully the matters which had led to our refusal.
- We have introduced new requirements for a provider to notify us of any material changes to its business plan or quality plan, such as changes to its business objectives and targets in response to unexpected change in the sector, significant changes to the subject areas it delivers, or changes to the relevant risks or ability to deliver these plans, during the registration period. This is to allow the OfS to assess fully what the provider is actually intending to deliver, should this change during the registration period.
- We will not require submission of information about historical investigations to which relevant individuals connected to a provider have been subject in the last 60 months. This is because we recognise that there was some overlap with the requirements under initial condition E9 relating to fit and proper persons and the requirement to declare certain investigations or adverse judgements made, particularly around the use of public funds. However, providers will be required to indicate on the investigation declaration form whether an investigation has been concluded or opened within the 60 months preceding the date of their registration application. We have also decided to add a yes/no tick box to declare if there are any live investigations ongoing into any relevant individual.

Next steps for providers

19. The new initial conditions C5, E7, E8, E9 and the majority of the changes to the requirements for a registration application come into force on **28 August 2025**. This means that they apply to any new applications for registration including, in the case of the new initial conditions of registration, any application from registered providers for registration in a different category of the OfS Register, received by the OfS on or after **28 August 2025**.
20. The restriction preventing a provider from reapplying within 12 months of receiving a final decision by the OfS to refuse registration, will not come into force until **1 January 2026**. That restriction will therefore only apply to any new registration applications made on or after **1 January 2026**, where the application on the basis of which the OfS made the final decision to refuse registration was also made on or after **1 January 2026**.
21. The new requirements for a registration application will not apply to any application by a registered provider for registration in a different category of the OfS Register. Instead, we will establish the application requirements for applications to change category of registration by issuing a bespoke notice issued to the relevant provider under section 3(5) of HERA. This is explained in more detail in the consultation outcomes and decision document on our changes to registration application requirements, which we are publishing alongside this document.
22. The new initial conditions and registration requirements will not generally apply to any application for registration made before **28 August 2025**. This includes applications that we are currently assessing or that are currently paused. However, if we identify particular regulatory risks posed by a provider, including a provider with an application currently paused, we may consider whether to apply one or more of the new initial conditions, or parts of those conditions, to that provider. If we propose to do this, we will consult on an individual basis with the provider affected.
23. To help providers understand our new requirements, and to prepare registration applications that will meet these requirements, we will hold engagement events for interested applicants in autumn 2025. These will be advertised on our website. Our amended guidance on how to register with the OfS, which we are publishing alongside this document, also sets out the pre-application support that will be available to individual providers.
24. We would like to thank all those who took the time to consider and respond to the questions in the consultation or provided feedback at our consultation engagement events. We have carefully considered all the responses we have received, and these insights have informed our decision making.

Background

25. In February 2025, we published a three-part consultation:

- Part 1 of the consultation set out our proposal to introduce a new initial condition C5 (treating students fairly) that would replace existing initial conditions C1 (guidance on consumer protection law) and C3 (student protection plan).
- Part 2 set out our proposal to introduce a new initial condition E7 (effective governance) that would replace existing initial conditions E1 (public interest governance) and E2 (management and governance).
- Part 3 set out our proposals to impose new requirements for registration applications. This would be done by issuing a notice under section 3(5) of HERA.

26. Respondents were asked to share their views by submitting written responses to an online survey. The consultation asked respondents a total of 87 questions. All questions were voluntary, so different response rates are recorded for different questions.

27. We received 55 responses across all three parts of the consultation from 28 respondents (some submitted a response to more than one part of the consultation). Most of these responses were submitted through the online survey. Some respondents submitted their response to us directly and a small number of responses were received after the published deadline. Those responses were also included in the analysis.

28. We held two online engagement sessions on 2 and 9 April 2025 with sector representative bodies, registered and unregistered providers and other stakeholders, to support their understanding of the proposals and to seek their feedback on them. We also held a roundtable event and discussions with sector representative bodies and other stakeholders during the consultation period. In coming to our decisions, we have considered the views shared during these sessions and discussions alongside the survey and written consultation responses.

Responses to the consultation

29. Over a third (35 per cent) of responses were submitted by or on behalf of registered higher education providers. Just under a third (32 per cent) of responses were from sector representative bodies and less than half of that figure (14 per cent) from unregistered providers. We also received responses submitted in a personal capacity from individuals working in the higher education sector (11 per cent) and from others with an interest in higher education regulation.

30. We asked a series of open and closed ('Do you agree or disagree...') questions in all three parts of the consultation. Some respondents did not expressly answer the closed questions. Some expressed agreement or disagreement but then qualified their responses in narrative comments. For example, some respondents stated they agreed with a particular proposal but expressed caution in some areas; others stated they disagreed overall but expressed support for some aspects of the proposal; some who stated they were unsure provided narrative responses that expressed mixed views. Most respondents did not respond to every question.

31. Alongside this document, we are publishing a consultation outcomes and decision document for each of the three parts of the consultation. In each document, we summarise and respond to the themes and key points made by respondents and set out the final decisions which we have made following our consideration of the points raised. In some cases, comments raised by respondents applied to more than one proposal. To avoid duplication we have, where appropriate, set out the respondents' views and our response under the proposal to which they primarily relate.

Comments on the consultation process and our response

32. Overall, there was significant support for the proposals and for the reasoning for them set out in the consultation document. Many respondents agreed with the aims of the proposals although some did not agree with specific aspects of the proposals.
33. We have summarised the comments we received on our proposals in each of the consultation outcomes and decision documents. We have summarised below some overarching comments that have not been captured in those individual documents.
34. A few respondents provided overarching comments about the consultation process, relating to its timing, complexity, length and what respondents considered would be additional cumulative regulatory burden imposed by proposals in the consultation.

Consultation process

35. One commented that the launch of what they considered to be a substantial consultation with extensive and complex documentation, at a time when other consultations were taking place, created a significant additional challenge to providers. The respondent considered the 11-week consultation period to have been too short given we were proposing significant changes and that the consultation did not align with the provisions of the Regulators' Code on simplicity and straightforward engagement.
36. We do not agree with those points. In Annex B of the summary of our proposals⁴ we set out the matters to which we had considered in reaching our proposals. In Annex A of this response document, we have set out the matters to which we had regard in making our decisions. This includes the Regulators' Code. Provision 2 of the Code says that regulators should 'provide simple and straightforward ways to engage with those they regulate and hear their views', including by having mechanisms in place to engage with those they regulate (and others) to offer views and contribute to the development of policies. We acknowledge that the three-part consultation was a lengthy document and covered detailed provisions. However, we took steps to simplify material and maximise opportunities for engagement, for example, we produced summaries of the proposals and other material (such as FAQs) on our website, held a series of stakeholder engagement events (as referred to above), and engaged with any stakeholders who contacted us about the consultation.
37. We consider that the 11-week consultation period was reasonable in the circumstances. In setting the period we balanced the importance of ensuring that we were able to implement any changes to our entry tests following the consultation in a timely manner, given the current challenges facing the sector, with the need to give providers and others sufficient time to

⁴ OfS, '[Proposals for reforms to OfS registration requirements](#)'.

consider our proposals. Further, we accommodated any extension requests we received for submitting consultation responses.

Timing of the consultation

38. Another respondent commented on the timing of the consultation because it overlapped with other consultations, such as the OfS strategy consultation and the Department for Education consultation on the registration of providers delivering higher education under a subcontractual arrangement. As well as suggesting that this was not useful in terms of 'efficacy and alignment', the respondent considered that the increasing regulatory burden from proposals in both this consultation and the Department for Education consultation, would have a detrimental impact on partnership provision in the sector.
39. As we explained in the consultation document, we have been prompted to review the entry requirements and registration application process at this time to ensure that providers admitted to the Register are able to manage the increased risks facing the sector, and to improve the overall quality of applications. Wider developments in the sector, such as the introduction of the Lifelong Learning Entitlement (LLE), and the Department for Education's consultation on the registration of delivery partners under subcontractual arrangements, may result in an increased number of providers seeking registration in the coming years. It was important that our consultation timescales enabled any changes to our entry tests to be in place ahead of this increase in demand. Our new entry tests and registration requirements fit within our proposed strategy for 2025-30 on which we recently consulted.
40. On the concern that there would be detrimental impacts on partnership provision as a result of burden arising from our proposals, we expect a provider delivering through a subcontractual arrangement, as with any provider seeking registration, to submit a full application that meets our requirements if it wants to be registered. It is essential that all registered providers are able to provide high quality education to students, treat their students fairly and are well governed. Our revised registration requirements will help the OfS to assess a provider's ability effectively to manage, oversee and deliver higher education within subcontractual arrangements and to comply with regulatory requirements designed to protect students' interests once registered. In response to feedback on the consultation, we have provided further information in the guidance underpinning initial condition C5 about our approach to providers delivering higher education through subcontractual partnerships.

Regulatory burden

41. One respondent, while not objecting to the proposals in principle, recommended that an impact analysis was undertaken, particularly in regard to the estimated time and resource allocation that the proposals are expected to cost higher education providers. They suggested that this would assist them with their understanding of OfS's expectations and effective planning, given what they considered to be the significant amount of resource needed to comply with the regulations.
42. In Annex B of our 'summary of proposals' consultation document we set out the matters to which we had regard in reaching our proposals. In Annex A of this document, we have set out the matters to which we had regard in making our decisions. In both cases, this included having regard to our general duty that regulatory activities should be proportionate. While some respondents considered that some of our proposals would increase regulatory burden, others

considered that they may reduce it. We acknowledge that some of our new requirements may create additional burden for providers seeking registration but we considered this carefully in making our decisions and concluded that our requirements are appropriate to protect against the significant risks to students and public money that we can see in the sector. In our view, the requirements that we are now implementing should be relatively straightforward for well-prepared providers to comply with, while also enabling us to identify and refuse registration for providers that present risks to students and taxpayers.

43. We are implementing new initial conditions of registration, at the same time as imposing new requirements to submit information as part of a provider's registration application. In parallel we are increasing the potential consequences for providers that do not submit required information (because their application may be refused). The resubmission restriction period will be 12 months, rather than the 18 months we proposed, and will only apply to any new registration applications made on or after 1 January 2026, where the application on the basis of which the OfS made the final decision to refuse registration was also made on or after 1 January 2026.

Annex A: Matters to which we have had regard in making our proposals

The OfS's general duties

1. In making our decisions, we have had regard to the OfS's general duties as set out in section 2 of HERA. These are:
 - a. the need to protect the institutional autonomy of English higher education providers,
 - aa. the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers,
 - ab. the need to protect the academic freedom of academic staff at English higher education providers,
 - b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
 - c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
 - d. the need to promote value for money in the provision of higher education by English higher education providers,
 - e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
 - f. the need to use the OfS's resources in an efficient, effective and economic way, and
 - g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.
2. In making our decisions, we have given particular weight to (b), (d), (e), (f) and (g).

Quality, choice and opportunities

3. Our new initial conditions on management and governance and consumer protection, are intended to ensure that students can choose from a range of providers that are able to deliver a high quality higher education. In our view, management and governance at a provider must be effective to ensure effective delivery of its higher education provision as a whole, including that the courses delivered to students are high quality. This is because a provider's management and governance determine its culture and decision making at all levels within the provider, including its effectiveness at delivering its objectives. To have a positive overall experience of

higher education, students must also be treated fairly as consumers. They should receive the higher education experience they are promised.

4. Students making choices about what and where to study need to be confident that the regulatory system ensures that they can choose from a range of providers that can comply with minimum regulatory standards. Opportunities for study are not meaningful if a student is able to choose courses which will result in a poor overall experience of higher education, or a course or provider that ends up closing because of financial pressures in the sector. We consider that our new initial conditions and registration requirements will have a positive effect on student choice of high quality higher education, because they mean that providers offering poor quality are less likely to become registered. Where a provider seeking registration is not meeting our requirements, we can ensure that current and future students are not exposed to unacceptable risks, by not registering that provider.

Value for money

5. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs. Student loans are taxpayer-backed. The investment of students and taxpayers in higher education is less likely to represent value for money where providers do not have effective governance arrangements that underpin delivery of high quality education or do not deliver the higher education experience that they promise to students. Our new requirements require providers to have effective management and governance arrangements and to treat students fairly, if they are to register with the OfS. Our new initial conditions also require providers to have arrangements for detecting and preventing the inappropriate use of public funds. They enable the OfS to test these arrangements at registration to ensure that students' and taxpayers' monies are used appropriately by any provider that is registered.

Equality of opportunity

6. The OfS's overall approach to regulation is designed to promote equality of opportunity in connection with access to, and participation in, higher education. This means that we are concerned with ensuring that students from disadvantaged or underrepresented backgrounds can access higher education and succeed on and beyond their courses.
7. Our new initial conditions seek to ensure that students from all backgrounds can choose to study at a range of registered providers that are effectively governed and deliver high quality higher education. Effective governance enables providers to successfully navigate the financial challenges facing the sector, and so protects students from potential risks to their study.
8. The OfS's Equality of Opportunity Risk Register⁵ identifies the risk that students may not have equal opportunity to access a sufficiently wide variety of higher education course types. This may result in restricted choice for students with certain characteristics, and subsequently to lower rates of progression to higher education, as well as lower continuation rates and lower course attainment for these students. Our new requirements will enable providers that can increase the types of higher education courses or the mode of course delivery delivered in a particular region, a more efficient registration process where this provision will be effectively

⁵ See [Risk 5: Limited choice of course type and delivery mode](#).

governed and of high quality. This could expand the range of positive higher education choices for students.

9. The government has recently consulted on proposals to require some delivery providers in subcontractual arrangements to register with the OfS for their students to be eligible for student support funding.⁶ The outcomes of that consultation have not yet been published by the government. If those proposals are implemented, this may increase the number of such providers seeking registration in future.
10. Students studying through subcontractual arrangements are more likely to be mature, from the most deprived areas of the UK, or living locally before entering higher education. They are somewhat more likely to be from a minority ethnic background or from an area of England where fewer young people go on to higher education.⁷ Subcontractual arrangements can offer alternative routes into higher education for students from disadvantaged or underrepresented backgrounds. Such routes only aid equality of opportunity, however, where these students receive a high quality education and are supported to engage fully in that education.
11. Our new initial conditions and registration requirements will enable the OfS to assess explicitly a provider's ability to effectively manage, oversee and deliver higher education within subcontractual arrangements and to comply with regulatory requirements designed to protect students' interests once registered. In refusing registration to providers that cannot do these things, we can limit the growth of providers that would offer poor choices for students.
12. In our view, it is also important for us to champion the consumer rights of students from disadvantaged and underrepresented backgrounds. Students from these backgrounds may have fewer choices available to them and may not have access to the information, advice and guidance needed to make the right choice for them. It is important that higher education choices being offered to all students is of high quality and delivered by a provider that is well governed and managed.
13. The cost to a student in financial and personal terms of being recruited to a course which is unsuitable for them can be significant. It may particularly affect students from disadvantaged or underrepresented backgrounds who may experience a greater opportunity cost by making the wrong choice of higher education course. Our new initial conditions on consumer protection deliberately set a high bar to treat students fairly. In some cases our requirements go further than the requirements of consumer law. They attempt to balance better the consumer dynamic between students, including those from disadvantaged and underrepresented backgrounds, and providers.

Efficient, effective and economic use of the OfS's resources

14. We have considered the need to use the OfS's resources in an efficient and effective way. We are currently spending too long assessing registration applications that are not adequately prepared. Where our assessment of a provider's application lasts for an extended period, this often means it will have to submit updated information during that assessment as its original submission becomes out of date. This can result in lengthy delays to the registration process, including for providers that have met our application requirements, and so delay the provision

⁶ GOV.UK, '[Franchising in higher education](#)'.

⁷ OfS, '[Subcontractual arrangements in higher education](#)' (Insight 22).

of higher education by innovative well-prepared providers. Our new requirements will enable the OfS to use its resources more efficiently and effectively by incentivising all providers to submit well-prepared registration applications and enabling us to quickly and efficiently reject registration applications which do not contain all the information we require. We can then prioritise our resources for providers that do submit applications that fulfil our registration submission requirements.

The principle that regulatory activities should be proportionate

15. We have considered the principles of best regulatory practice, in particular of proportionality. Our new requirements seek to ensure that the OfS can protect the interests of students while balancing this with the interests of providers and their staff. Our new requirements are intended to be relatively straightforward for well-prepared providers to comply with, while also enabling us to identify and refuse providers that present risks to the interests of students and taxpayers.
16. We have considered carefully whether less intrusive options would achieve our regulatory aims. For example, whether we should require different documents from different types or size of provider. Where we are implementing universal requirements for all providers to submit information as part of their registration applications, this is because we consider that this information would be necessary in all cases for the OfS to accurately assess providers against the initial conditions of registration.
17. We have sought to avoid obvious overlap in our new requirements. For example, we have decided not to require submission of information about historical investigations to which relevant individuals connected to a provider have been subject in the last 60 months. This is because we recognise that there was some overlap with the requirements under E9 relating to fit and proper persons and the requirement to declare certain investigations or adverse judgements made, particularly around the use of public funds. However, providers will be required to indicate in the documents they submit to us, whether there are any ongoing investigations into any relevant individual since the outcome of those investigations could be relevant to our assessment of 'fit and proper persons' considerations under initial condition E9.
18. We have also flexed our requirements where appropriate. For example, where a provider does not intend, if registered, to charge tuition fees to students because it will only deliver higher education under a subcontractual agreement, the provider may submit a combination of its own documents and those of its lead provider in that subcontractual arrangement to satisfy our submission requirements for initial condition C5. We do not require the provider seeking registration to prepare and submit documents it would not use (for example, those relating to the payment or refund of tuition fees).
19. Nevertheless, we recognise that there will be a cost to providers in terms of staff time to understand the OfS's regulatory requirements and prepare registration applications accordingly. In particular, we have considered the impact of our proposals on small providers, or those with small numbers of higher education students. We recognise that smaller providers would have a smaller number of staff available to consider and address the OfS's regulatory requirements. This means that such providers may experience a disproportionate regulatory burden compared with larger providers. Conversely, larger providers may have more complex oversight and approval processes for their arrangements, requiring lots of staff resource.

20. However, in our view it is necessary to require all providers to comply with minimum requirements in relation to consumer protection and management and governance arrangements, regardless of their size. This ensures a minimum level of regulatory protection for all students, notwithstanding that it may be more burdensome for some providers to comply than others. Students studying at small providers should not receive a lower quality experience, or receive less regulatory protection, than students studying at larger providers.
21. We acknowledge that our new initial conditions, in particular those set out in initial condition E9 (the requirements for some individuals to be fit and proper persons and to have sufficient knowledge and expertise) have the potential to indirectly affect individual staff members or role-holders at providers for example if, upon assessment, they are found not to meet the requirements of initial condition E9. We consider that these issues are likely only to arise in exceptional circumstances. The impact on individuals is likely to be fact-specific and we will consider matters of proportionality in the context of the individual case.

The principle that regulatory activities should be transparent

22. We have considered the need for our requirements and approach to be transparent, another principle of best regulatory practice. Each of the new initial conditions of registration is underpinned by detailed guidance, including on how they will be assessed. This will support consistency in OfS decision making. In response to feedback we received on the consultation, we have clarified some of the detail in the new conditions, and provided further guidance, for example in the OfS prohibited behaviours list in initial condition C5. Alongside the new initial conditions of registration, we are publishing detailed guidance, Regulatory advice 3, to support providers in making their registration application. Regulatory advice 3 includes detailed operational guidance on the interview process and fit and proper persons checks that will underpin new initial condition E9.

Institutional autonomy, competition and freedom of speech

23. We have also had regard to our general duties relating to the need to protect the institutional autonomy of providers, encourage competition and promote free speech and protect academic freedom. However, we have given less weight to these duties.
24. We recognise that our new initial conditions prescribe requirements for providers' management and governance arrangements, and that such prescription may impinge on providers' institutional autonomy. However, we consider that our requirements are necessary to ensure that providers registering with the OfS have effective management and governance at the point of registration. For the reasons set out above, we consider that effective management and governance arrangements underpin a high quality education experience for students and therefore we have given more weight to the need to promote quality and value for money in English higher education than to institutional autonomy. Providers will continue to have scope to adopt governance arrangements that are suitable for their particular context.
25. A provider that does not meet our new initial conditions and registration submission requirements will be refused registration. This may mean that fewer providers enter the regulated market, meaning reduced competition and less choice for students. However, in our view, choice is not meaningful unless it is of high quality providers. Effective management and governance, and treating students fairly, underpin the provision of a high quality higher education. Providers that cannot meet our requirements will not provide meaningful

competition, in the interests of students or employers. Therefore, we have given less weight to the need to promote competition.

26. We have also had regard to the need to promote the importance of free speech and to protect academic freedom. However, those duties are less pertinent to our decisions about our new initial conditions and registration requirements.

The public sector equality duty

27. In making our final decisions, we have had due regard to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
28. Our new initial conditions and registration submission requirements may particularly affect current and prospective students of unregistered providers that may in future seek to register with the OfS. Our new requirements are intended to have a positive impact on all students. We know that at a national level, some students sharing protected characteristics may not have equal opportunity to access a sufficiently wide variety of higher education course types and may be less likely to succeed on courses where the course type or delivery style is not suited to their situation.⁸ Our new requirements are intended to secure minimum requirements at the point of registration for consumer protection and management and governance at providers that are successfully registered. In doing so, our new requirements will increase the range of positive higher education choices for students by enabling effectively governed providers whose higher education provision is of high quality to register without delay, while limiting the growth of providers that would represent poor choices for students.
29. Students studying through subcontractual arrangements are more likely than students in general to be mature and somewhat more likely to be from a minority ethnic background.⁹ We consider that our new initial conditions and registration requirements will over time increase the likelihood that these students are enrolled at providers that can effectively manage, oversee and deliver higher education within subcontractual arrangements.

Guidance issued by the Secretary of State

30. We have had regard to guidance issued to the OfS by the Secretary of State¹⁰ under section 2(3) of HERA, including the following guidance:
- a. Guidance to the OfS on strategic priorities for the financial year 2022-23 (31 March 2022).
 - b. Guidance to the OfS on the future of access and participation (23 November 2021).
31. In the March 2022 guidance, the Secretary of State sets out the need to 'ensure that the LLE is supported by an appropriate regulatory regime, fully equipped to support radically different,

⁸ See [Risk 5: Limited choice of course type and delivery mode](#).

⁹ OfS, '[Subcontractual arrangements in higher education](#)' (Insight 22).

¹⁰ All statutory guidance cited is available at [Guidance from government](#).

flexible arrangements'. In implementing new initial conditions now, we aim to ensure that future expansion is supported by a regulatory regime which remains rigorous, while being designed to test arrangements at the point of registration for management and governance and student consumer protection that take account of the diverse types of providers seeking registration.

32. Our regulatory requirements are designed so that providers with different governance structures and models can meet them. We recognise that our new initial conditions include a degree of prescriptiveness in the governance arrangements that will be required to ensure compliance with the OfS's conditions of registration. However, we consider that our requirements are necessary to ensure that a provider has effective management and governance arrangements at the point of registration. Effective management and governance arrangements underpin a high quality education experience for students.
33. The March 2022 guidance also comments that to address potential 'cold spots' in higher education provision, the OfS should 'explore ways of encouraging the expansion of HE provision into new areas, while ensuring that high quality provision is maintained'. Our new requirements will make the registration process simpler for well-prepared providers while improving our ability to identify and refuse applications from providers that are not ready. Registering high quality providers will increase choice and opportunity for students in new areas.
34. The Secretary of State and the Minister of State commented in the March 2022 guidance that the OfS should consider what more can be done to 'reduce the burden on providers of responding to the OfS's requirements. In particular... ways [the OfS] can work with the sector to communicate more clearly its expectations'. We explain above how we have had regard, so far as relevant, to the principles of best regulatory practice, including the principles that regulatory activities should be transparent.
35. In designing new requirements, we have sought to balance regulatory burden with protecting the interests of students and the taxpayer. We have reduced burden where possible. For example, we have changed the application of ongoing condition C3 so that it will not apply to providers registered on the basis of initial condition C5. Our requirements, where appropriate, refer to existing legislation and guidance with which providers would need to be familiar in any event. In response to feedback we received on the consultation, we have clarified some of the detail in the new conditions and provided further guidance underpinning the conditions. We are publishing detailed operational guidance alongside the new initial conditions, to support providers to understand, and comply with, our requirements.
36. In 'the future of access and participation' guidance issued on 23 November 2021, the Secretary of State's expressed the view that 'there should be a shift away from marketing activities which serve to benefit the institutions and not students'. Our focus on setting a higher bar for protecting students as consumers includes ensuring that, in marketing their higher education courses, providers supply clear and accurate information and do not mislead students about the benefits of studying with that provider.
37. The same November 2021 guidance states that 'Providers should not be incentivised, nor rewarded, for recruiting disadvantaged students onto courses where too many students drop out or that do not offer good graduate outcomes.' 60.6 per cent of students studying in subcontractual arrangements – where registered lead providers have subcontracted the

delivery of provision to either registered or unregistered delivery providers – live in areas in the bottom two quintiles of the Index of Multiple Deprivation (the most deprived), compared with 33.9 per cent of full-time taught or registered undergraduate students at the same providers.¹¹

38. We know from our data dashboard on subcontractual provision that the continuation rates for students studying in subcontractual partnerships are below the OfS's threshold.¹² We will address the risks in relation to subcontractual provision by ensuring that delivery providers in subcontractual partnerships that do not meet our new rigorous initial conditions will not be registered. Those providers will not then be able to access the benefits of registration and therefore will not be able to recruit students, including students from disadvantaged backgrounds, onto courses where too many students drop out.

The Regulators' Code

39. We have had regard to the Regulators' Code.¹³ Section 3 of the code is particularly relevant. Section 3 discusses the need to base regulatory activities on risk. Paragraph 3.1 provides for regulators to use an evidence-based approach to determine priority risks and allocate resources where most effective. Paragraph 3.5 provides for regulators to review the effectiveness of their activities and make necessary adjustments accordingly.
40. We have reflected on the effectiveness of our arrangements for assessing, at the point of registration, providers' ability to deliver a high quality higher education experience for students underpinned by effective management and governance arrangements and an approach that treats students fairly. Our new requirements have been informed by the well-documented increased risks to public money posed by the growth of subcontractual provision.¹⁴ Our requirements also set out clearly our regulatory expectations, including document submission requirements, which support greater regulatory certainty at the registration stage for providers.
41. Section 5 of the code is also relevant, in that it discusses the need for regulators to ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. Paragraph 5.2 provides for regulators to publish guidance, and information in a clear, accessible and concise format. As we note above in relation to transparency, we have clarified some of the detail in the new conditions and provided further explanation of some elements in response to feedback that we received on the consultation. We are also publishing detailed operational guidance, including templates and checklists where appropriate, alongside the initial conditions.

¹¹ See [Size and shape of provision data dashboard: Data dashboard](#).

¹² Based on 2021-22 data, see [Subcontractual partnership student outcomes dashboard: Data dashboard](#).

¹³ GOV.UK, '[Regulators' Code](#)'.

¹⁴ For example see, National Audit Office, '[Investigation into student finance for study at franchised higher education providers](#)'.



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